

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

CR 11-200 ADM/FLN

UNITED STATES OF AMERICA,	)	INDICTMENT
	)	
Plaintiff,	)	(18 U.S.C. § 2)
	)	(18 U.S.C. § 656)
v.	)	
	)	
(1) JOHN ANTHONY MARKERT,	)	
	)	
(2) GREGORY PAUL PEDERSON, and	)	
	)	
(3) GEORGE LESLIE WINTZ, JR.,	)	
	)	
Defendants.	)	

THE UNITED STATES GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment:

1. Pinehurst Bank was a financial institution located in St. Paul, Minnesota, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. Bank A was a financial institution located in Roseville, Minnesota, the deposits of which were insured by the Federal Deposit Insurance Corporation.

3. John Anthony MARKERT was the President of Pinehurst Bank from about June 2007 until his termination on or about January 29, 2010. Before working for Pinehurst Bank, from about 2001 to June 2007, MARKERT served as an officer at Bank A, and was its President from about November 2003 to June 2007.

4. Gregory Paul PEDERSON was the Chief Credit Officer and Senior Vice President at Pinehurst Bank from about July 2007 until

SCANNED

JUN 21 2011

U.S. DISTRICT COURT MPLS

FILED JUN 21 2011

RICHARD D. SLETTEN, CLERK

JUDGMENT ENTERED

DEPUTY CLERK'S INITIALS

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his termination on or about January 29, 2010. As Chief Credit Officer, PEDERSON was responsible for ensuring the quality of Pinehurst Bank's lending portfolio. Before working for Pinehurst Bank, from about 2004 to June 2007, PEDERSON worked as a commercial loan officer for MARKERT at Bank A.

5. George Leslie WINTZ, Jr. is a Twin Cities businessman who owned or controlled trucking and warehousing businesses operating under several different names, including McCallum Transfer, Inc. ("McCallum Transfer"), Triangle Warehouse, Inc. ("Triangle Warehouse"), and Cue Properties, LLC ("Cue Properties").

6. WINTZ and his various businesses were long-time banking customers of MARKERT's. PEDERSON was WINTZ's commercial loan officer at Bank A.

7. After MARKERT and PEDERSON left Bank A to join Pinehurst Bank, in about 2007 MARKERT recruited WINTZ to become a new customer of Pinehurst Bank. WINTZ also kept some banking business with Bank A. PEDERSON became WINTZ's commercial loan officer at Pinehurst Bank, just as he had been at Bank A.

8. In 2008 and 2009, in addition to other accounts, WINTZ owned or controlled the following businesses that banked at one or both of the aforementioned banks:

a. McCallum Transfer had a checking account at Pinehurst Bank over which WINTZ had signing authority.

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b. Triangle Warehouse had a checking account at Bank A over which WINTZ had signing authority.

c. Cue Properties had a checking account at Pinehurst Bank over which WINTZ had signing authority.

**COUNTS 1-5**  
**(Misapplication of Bank Funds)**

9. The Grand Jury restates and realleges paragraphs 1 through 8 above as if fully set forth herein.

10. On or about March 6, 2009, and continuing until at least January 29, 2010, in the State and District of Minnesota, the defendants,

**JOHN ANTHONY MARKERT and**  
**GREGORY PAUL PEDERSON,**

aiding and abetting one another, being officers, directors, agents, and employees of Pinehurst Bank, and aided and abetted by others known and unknown to the Grand Jury, including the defendant,

**GEORGE LESLIE WINTZ, JR.,**

did knowingly and willfully embezzle, abstract, purloin, and misapply the moneys of Pinehurst Bank, acting with intent to injure and defraud Pinehurst Bank, by approving five loans to straw borrowers of WINTZ, and disbursing \$1.9 million in bank funds to those borrowers, knowing that the funds were intended to cover a \$1.9 million fraudulent check-kiting scheme devised and executed by

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WINTZ, and knowing that WINTZ, not the straw borrowers, was the actual borrower on each of the loans.

**WINTZ's Fraudulent Check-Kiting Scheme**

11. In about June 2008, a Pinehurst Bank employee noticed that from late February 2008 into June 2008 WINTZ was occasionally writing batches of checks, drawn on different business checking accounts he controlled at different banks, that were payable to other businesses he controlled and that were deposited into the bank accounts of those other businesses.

12. WINTZ's Cue Properties account at Pinehurst Bank was among the accounts subject to this activity.

13. The vast majority of the deposits WINTZ made using a service called remote deposit, which permitted WINTZ to use a scanning machine to deposit checks electronically without physically presenting them at a bank.

14. The Pinehurst Bank employee concluded that WINTZ was engaging in the fraudulent practice of check-kiting, that is, he was fraudulently writing and depositing checks drawn on accounts with insufficient funds among multiple bank accounts so as to falsely inflate the account balances. As a result of the falsely-inflated balances, the banks honored other checks WINTZ was writing, expenses WINTZ was incurring, and withdrawals WINTZ was making.

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15. The amounts of the checks involved in the February 2008 to June 2008 check-kiting activity ranged from \$5,000 to \$90,000.

16. The employee promptly reported WINTZ's June 2008 check-kiting activity to MARKERT.

17. Although MARKERT could have placed a hold on WINTZ's account and terminated his remote deposit privileges, MARKERT instead approved the overdrafts generated by WINTZ's activity, and allowed him to continue using remote deposit to deposit checks at Pinehurst Bank even after June 2008.

18. MARKERT failed to disclose to the Pinehurst Bank Board of Directors that WINTZ, his long-time customer and one of the bank's newest and largest customers, appeared to be kiting tens of thousands of dollars of checks during the first half of 2008.

19. By no later than September 2008, WINTZ began routinely writing nonsufficient funds ("NSF") checks drawn on the account of McCallum Transfer at Pinehurst Bank and depositing them into the account of Triangle Warehouse at Bank A. At virtually the same time, he began writing NSF checks drawn on the account of Triangle Warehouse at Bank A and depositing them into the account of McCallum Transfer at Pinehurst Bank.

20. WINTZ signed the NSF checks, which were sequentially-numbered, and used his remote deposit privileges at both banks to deposit them.

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21. WINTZ knew that the real balances in the respective bank accounts, disregarding the NSF checks, was not sufficient to cover payment of the items, and knew that the recorded balances in the accounts would be falsely inflated as a result of the deposits.

22. It was the purpose of WINTZ's scheme that, by kiting these checks, he deceived the banks into honoring and paying other items out of the falsely-inflated balances, including business and personal expenses that WINTZ otherwise would not have been able to pay.

23. During the time WINTZ was kiting the checks, the amounts of the kited checks he wrote, and the size of the corresponding deposits he made, necessarily grew so that the deposits would be large enough to cover other kited checks WINTZ was writing in addition to the other real expenses WINTZ was incurring against the inflated balances.

24. The result of these growing deposits was that, by February 2009, WINTZ was routinely kiting hundreds of thousands of dollars in checks on a daily basis, while the true balances in the accounts, disregarding the kited checks, was running negative.

25. On occasion, WINTZ's check-kiting generated an overdraft on one of his accounts at Pinehurst Bank. When that happened, Pinehurst Bank employees brought the overdraft to MARKERT's

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attention, who authorized the employees to pay the items in question.

**Bank A's Discovery of the Check-Kiting Scheme**

26. On about February 26, 2009, employees at Bank A noticed large deposits going into WINTZ's Triangle Warehouse account at Bank A, nearly all of which were comprised of checks payable to Triangle Warehouse that WINTZ signed and that were drawn on McCallum Transfer's account at Pinehurst Bank.

27. The Bank A employees also saw that WINTZ was writing large, sequentially-numbered checks drawn on his Triangle Warehouse account at Bank A that were payable to McCallum Transfer.

28. Believing that WINTZ was kiting checks between the two banks, by Friday, February 27, 2009, Bank A placed a hold on his Triangle Warehouse account, such that no deposits could be made, no withdrawals could be made, and no checks could be paid. Bank A also on that date terminated WINTZ's remote deposit privileges.

29. As a result of the hold, the next week Bank A returned more than \$1.8 million in checks that WINTZ had written on his Triangle Warehouse account, made payable to McCallum Transfer, and deposited in McCallum Transfer's account at Pinehurst Bank, as follows:

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Check No.	Check Date	Payee	Signer	Amount
53160	2/25/2009	McCallum Transfer	WINTZ	\$ 126,039.91
53161	2/25/2009	McCallum Transfer	WINTZ	134,099.32
53162	2/25/2009	McCallum Transfer	WINTZ	119,313.10
53163	2/25/2009	McCallum Transfer	WINTZ	123,014.50
53164	2/25/2009	McCallum Transfer	WINTZ	139,162.58
53165	2/25/2009	McCallum Transfer	WINTZ	104,110.86
53166	2/25/2009	McCallum Transfer	WINTZ	108,229.98
53167	2/25/2009	McCallum Transfer	WINTZ	127,062.04
53170	2/26/2009	McCallum Transfer	WINTZ	\$ 127,006.15
53171	2/26/2009	McCallum Transfer	WINTZ	130,021.03
53172	2/26/2009	McCallum Transfer	WINTZ	117,013.55
53173	2/26/2009	McCallum Transfer	WINTZ	135,159.14
53174	2/26/2009	McCallum Transfer	WINTZ	122,100.46
53175	2/26/2009	McCallum Transfer	WINTZ	129,039.49
53176	2/26/2009	McCallum Transfer	WINTZ	110,016.21
TOTAL:				\$1,851,388.32

**MARKERT's Approval of Pinehurst Bank's Payment of WINTZ Checks**

30. As of the end of February 2009, WINTZ already had about \$1.2 million in outstanding loans at Pinehurst Bank, near the bank's legal lending limit of \$1.25 million. MARKERT, PEDERSON, and WINTZ knew that WINTZ's lending privileges at Pinehurst Bank were virtually exhausted.



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31. While Bank A was discovering and putting a stop to WINTZ's check-kiting scheme, in late February 2009, MARKERT personally authorized Pinehurst Bank's payment of all of WINTZ's checks, even though he knew WINTZ was near his lending limit and that payment would generate two separate overdrafts totaling more than \$1.8 million.

32. Specifically, first, on February 23, 2009, MARKERT personally approved an overdraft on McCallum Transfer's account at Pinehurst Bank totaling more than \$900,000, and instructed Pinehurst Bank employees to pay all the items generating the overdraft.

33. The February 23, 2009 overdraft included the following kited checks, drawn on McCallum Transfer's account at Pinehurst Bank and made payable to Triangle Warehouse for deposit in its account at Bank A:

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Check No.	Check Date	Payee	Signer	Amount
4911	2/20/2009	Triangle Warehouse	WINTZ	\$ 140,211.03
4912	2/20/2009	Triangle Warehouse	WINTZ	135,019.52
4913	2/20/2009	Triangle Warehouse	WINTZ	132,070.95
4914	2/20/2009	Triangle Warehouse	WINTZ	133,328.60
4915	2/20/2009	Triangle Warehouse	WINTZ	141,399.09
4916	2/20/2009	Triangle Warehouse	WINTZ	128,402.60
4917	2/20/2009	Triangle Warehouse	WINTZ	121,520.91
TOTAL:				\$ 931,952.70

34. Second, on February 27, 2009, MARKERT personally approved an overdraft on McCallum Transfer's account at Pinehurst Bank, again totaling more than \$900,000, and instructed Pinehurst Bank employees to pay all the items generating the overdraft.

35. The February 27, 2009 overdraft included the following kited checks, drawn on McCallum Transfer's account at Pinehurst Bank and made payable to Triangle Warehouse for deposit in its account at Bank A:

Check No.	Check Date	Payee	Signer	Amount
4943	2/26/2009	Triangle Warehouse	WINTZ	\$ 132,061.07
4944	2/26/2009	Triangle Warehouse	WINTZ	118,402.11
4945	2/26/2009	Triangle Warehouse	WINTZ	124,009.09
4946	2/26/2009	Triangle Warehouse	WINTZ	120,356.28
4947	2/26/2009	Triangle Warehouse	WINTZ	137,082.31

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Check No.	Check Date	Payee	Signer	Amount
4948	2/26/2009	Triangle Warehouse	WINTZ	101,163.80
4949	2/26/2009	Triangle Warehouse	WINTZ	116,455.09
4950	2/26/2009	Triangle Warehouse	WINTZ	122,077.49
SUBTOTAL:				\$ 971,607.24

36. MARKERT approved these checks for payment with knowledge of, and in reckless disregard for, the fact that the checks were part of WINTZ's check-kiting scheme and WINTZ was already near his lending limit.

37. MARKERT approved these checks for payment notwithstanding the fact that WINTZ had insufficient funds to cover the items.

38. MARKERT approved these checks for payment without consulting any members of the Pinehurst Bank Board of Directors or otherwise investigating the activity generating the overdrafts, even though the effect of the approvals was to grant WINTZ nearly \$1.9 million in additional unsecured credit.

**Defendants' Misapplication of Bank Funds to Cover Check-Kiting Scheme**

39. No later than the week of March 2, 2009, an employee of Pinehurst Bank learned of WINTZ's check-kiting scheme and the fact that Bank A was in the process of returning the series of Triangle Warehouse checks that WINTZ had written and deposited into McCallum

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Transfer's account at Pinehurst Bank, as set forth in Paragraph 29 above.

40. By at least Friday, March 6, 2009, and by no later than Saturday, March 7, 2009, MARKERT and PEDERSON both knew that Bank A returned a series of kited checks and that, unless WINTZ could obtain additional funds to cover the returned items, McCallum Transfer's account at Pinehurst Bank would be overdrawn by more than \$1.8 million.

41. MARKERT and PEDERSON knew that, unless covered, an overdraft of that magnitude would need to be disclosed to banking regulators and the Pinehurst Bank Board of Directors, because among other reasons it far exceeded Pinehurst Bank's lending limit of \$1.25 million per borrower.

42. MARKERT and PEDERSON also knew that, as of March 6, 2009, the balance of WINTZ's then-outstanding loans at Pinehurst Bank, in aggregate, was already about \$1.2 million, near the bank's lending limit, such that Pinehurst Bank could not lend directly to WINTZ or his companies anywhere near the amount of money needed to cover the overdraft generated by his check-kiting scheme.

43. Pinehurst Bank's loan policy required approval by its Board of Directors of all loans in excess of \$500,000, based on aggregate transactions of the borrower including related borrowers.

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The policy also required the Board of Directors to approve all unsecured consumer loans in excess of \$250,000.

44. Pinehurst Bank's loan policy required approval by its Officer Loan Committee ("OLC") of loans in excess of \$250,000 up to \$500,000, based on aggregate transactions of the borrower including related borrowers. As of March 2009, the OLC consisted of four members: MARKERT, PEDERSON, Individual A, and Individual B.

45. The Pinehurst Bank loan policy required the OLC to prepare minutes of their loan approval decisions, which customarily were disclosed to the Board of Directors at their monthly meetings.

46. To avoid recording and disclosing a more than \$1.8 million pending overdraft on the McCallum Transfer account, MARKERT and PEDERSON fraudulently misapplied bank funds by approving a series of five nominee loans for WINTZ, totaling \$1.9 million, which loans were in the names of five straw borrowers and the proceeds of which went into the McCallum Transfer account.

47. MARKERT and PEDERSON actively participated in WINTZ's recruitment of the straw borrowers, each of whom had a connection to WINTZ and who agreed to have their names, or the names of their businesses, used as borrowers.

48. To induce one individual to serve as a straw borrower for WINTZ, MARKERT falsely represented on March 9, 2009 that the Pinehurst Bank Board of Directors could approve a loan directly to

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WINTZ, in his own name, but was not meeting for two more weeks which would be too late to meet WINTZ's urgent financial needs. In truth and in fact, as MARKERT well knew: (1) the Board of Directors was scheduled to meet and did meet the following day, March 10, 2009; (2) the Board of Directors had the ability to approve, and regularly did approve, loans by telephone and email if necessary; and (3) the Pinehurst Bank Board of Directors could not in any event have approved a substantial additional loan to WINTZ to meet his financial needs, due to his being up against the bank's lending limit.

49. The defendants structured the nominee loans so that each loan did not exceed the \$500,000 amount that would have required approval by the Board of Directors.

50. MARKERT, PEDERSON, and Individual A, as members of the OLC, approved each of the five nominee loans. MARKERT, PEDERSON, and Individual A excluded Individual B, the fourth member of the OLC, whom they knew was one of the original shareholders of Pinehurst Bank and a confidant of Pinehurst Bank's Chairman of the Board of Directors, from participating in consideration of the loans, and thereafter concealed the true nature of the loans from Individual B.

51. On or about March 9, 2009, to cover WINTZ's check-kiting scheme before the overdraft was recorded in McCallum Transfer's

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account, MARKERT, PEDERSON, and Individual A approved each of the nominee loans on an expedited basis, in disregard of many of Pinehurst Bank's standard loan underwriting practices, such as obtaining independent appraisals for real estate collateral.

52. MARKERT, PEDERSON, and Individual A knew that WINTZ was the true borrower and that the straw borrowers were not themselves creditworthy to repay the loans, which they nonetheless approved no later than March 9, 2009.

53. Once MARKERT, PEDERSON, and Individual A approved the nominee loans, on the afternoon of March 9, 2009, Individual A caused Pinehurst Bank to disburse the loans' proceeds, totaling \$1,884,500 net of loan fee income, into the WINTZ-controlled account of Cue Properties at Pinehurst Bank.

54. Almost immediately following the disbursement of each loan's proceeds into WINTZ's Cue Properties account, Individual A caused Cue Properties to make "telephone transfers" in the same amounts, totaling \$1,884,500, into WINTZ's McCallum Transfer account at Pinehurst Bank.

55. On March 10, 2009, as a result of the disbursement of the nominee loan proceeds and transfers to McCallum Transfer on the afternoon of March 9, 2009, the pending shortfall of more than \$1.8 million was erased, and the returned item debits, posted as a result of Bank A's return of the kited checks, were cleared without

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Pinehurst Bank recording any overdraft, and without MARKERT or PEDERSON reporting on the events to the Board of Directors or banking authorities.

Defendants' Concealment of the Scheme

56. After the nominee loans were approved and funded, MARKERT and PEDERSON concealed from the Pinehurst Bank Board of Directors WINTZ's \$1.8 million check-kiting scheme.

57. After the nominee loans were approved and funded, MARKERT and PEDERSON concealed the true nature of the nominee loans from the Pinehurst Bank Board of Directors and Individual B, by not preparing and disclosing minutes reflecting the OLC's approval of the loans, by concealing WINTZ's relationships with the straw borrowers, and by concealing the fact that WINTZ was the true borrower for each of the loans.

58. After the nominee loans were approved and funded, PEDERSON personally tracked the progress of all WINTZ-related loans, including the nominee loans, on a monthly basis, but he never reported to the Pinehurst Bank Board of Directors that the nominee loans had any relation to WINTZ, let alone that they were in truth WINTZ's loans.

59. At times, WINTZ funded the straw borrowers' periodic repayments on the loans, by providing sufficient funds to the straw borrowers so that they could make payments in their names to



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Pinehurst Bank. At other times, WINTZ made the payments on the nominee loans himself directly.

**Pinehurst Bank's Discovery of the Scheme and Resulting Failure**

60. On or about January 28, 2010, during the course of an independent audit required by banking regulations, an auditor approached PEDERSON with questions about one of the nominee loans. PEDERSON provided incomplete and evasive responses before abruptly leaving the bank. PEDERSON's conduct with the auditor led to the discovery of all five nominee loans, which that same evening were brought to the attention of Pinehurst Bank's Chairman of the Board.

61. On about January 29, 2010, Pinehurst Bank terminated the employment of MARKERT, PEDERSON, and Individual A.

62. Shortly thereafter, Pinehurst Bank disclosed the nominee loans to bank regulators and was required to reclassify the loans as losses on the bank's books. The recording of those losses rendered Pinehurst Bank insolvent and ultimately led to its closure by the FDIC on May 21, 2010.

63. As a result of Pinehurst Bank's failure, its shareholders lost their entire equity investments in the bank. The FDIC also suffered losses of at least several million dollars in connection with the closure of the bank.

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**Defendants' Execution of the Scheme**

64. In execution of the scheme, on or about March 9, 2009, in the State and District of Minnesota, the defendants,

**JOHN ANTHONY MARKERT and  
GREGORY PAUL PEDERSON,**

aiding and abetting one another, being officers, directors, agents, and employees of Pinehurst Bank, and aided and abetted by others known and unknown to the Grand Jury, including the defendant,

**GEORGE LESLIE WINTZ, JR.,**

did knowingly and willfully embezzle, abstract, purloin, and misapply the moneys, funds, and credits of Pinehurst Bank, acting with intent to injure and defraud Pinehurst Bank, by approving the following five nominee loans:

Count	Nominee Loan Description	Loan Amount
1	Consumer loan in the name of straw borrower, Individual C, the brother of WINTZ's long-time girlfriend	\$ 350,000.00
2	Consumer loan in the name of straw borrower, Individual D, WINTZ's long-time girlfriend	350,000.00
3	Consumer loan in the name of straw borrower, Individual E, WINTZ's former loan officer, and MARKERT's and PEDERSON's former colleague, at Bank A	200,000.00
4	Commercial loan in the name of Triangle Logistics, Inc., signed by Individual F, WINTZ's long-time friend and employee, as President and Owner	500,000.00

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Count	Nominee Loan Description	Loan Amount
5	Commercial loan in the name of Win Properties, LLC, signed by Individual G, WINTZ's daughter, as Owner	500,000.00
	<b>TOTAL:</b>	<b>\$1,900,000.00</b>

65. All in violation of Title 18, United States Code, Sections 2 and 656.

#### Forfeiture Allegations

66. Counts 1 through 5 of this Indictment are hereby realleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

67. As the result of the offenses alleged in Counts 1 through 5 of this Indictment, the defendants shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Section 656.

68. If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21,

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United States Code, Section 853(p), as incorporated by Title 28,  
United States Code, Section 2461(c).

All in violation of Title 18, United States Code, Sections  
656 and 981(a)(1)(C), and Title 28, United States Code, Section  
2461(c).

A TRUE BILL

\_\_\_\_\_  
UNITED STATES ATTORNEY

\_\_\_\_\_  
FOREPERSON